IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO. 774 OF 2007

IN

NOTICE OF MOTION NO. 2779 OF 2007

IN

SHORT CAUSE SUIT NO. 3274 OF 2003

WITH

CIVIL APPLICATION NO. 1079 OF 2007

Daji Tukaram Pukale & Ors. ... Appellants
(Org. Defendants)

Versus

Appa Bapu Kolekar & Ors. ... Respondents
(Org. Plaintiff)

Mr.Amit H.Yadav, Advocate, for the appellants

Mr. P.S.Madkaikar,Advocate, for the respondents.

CORAM: J.H.BHATIA,J.

DATE: 5th December,2007.

P.C.

1. Heard learned Counsel for the parties.

2. The plaintiff/respondent No.1 filed Short Cause Suit No.3274 of 2003 for possession of the suit premises against the defednants, who are the appellants before this Court. According to the plaintiff, he is a tenant

in the suit premises. Because of acquaintance with the defendants, the plaintiff had allowed them to reside in the suit premises and that too without any charges. Several issues were framed in the matter. Recently, the Full Bench of this Court in **Prabhudas Damodar Kotecha & Anr. vs. Smt. Manharbala Jeram Damodar & Ors. in Writ Petition NO.148 of 2004** held that suit by licensor against a gratuitous licensee is tenable before the Presidency Small Cause Court under Section 41 of the Presidency Small Cause Courts Act, 1882 (for short, "PSCC Act"). In view of this Judgment of the Full Bench, the defendants moved an application in the form of a Notice of Motion to return the plaint to the plaintiff on the ground that the City Civil Court does not have jurisdictiion to entertain the suit. That application was opposed by the plaintiff. After hearing the parties, the learned trial Court rejected the application. Therefore, the defendants have preferred the present Appeal.

3. The learned trial Court in para 2 of the impugned order has noted that in the plaint the plaintiff has categorically stated that the defendants are residing in the suit premises with the permission of the plantiff and free of costs and it showed that the plaintiff admittedly had granted the defednants license to stay in the suit premises free of charges. In view of the pleading of the plaintiff, as noted by the trial

Court, it is clear that according to the plaintiff, the defendants are gratuitous licensees. In view of the Full Bench Authority in **Prabhudas Kotecha vs. Manharbala (supra),** the City Civil Court does not have jurisdiction to entertain the suit and the suit by the licensor against gratuitous licensee is tenable before the Presidency Small Cause Court under Section 41 of the PSCC Act. In view of the pleadings and the legal position settled by the Full Bench of this Court, it cannot be said that it is a mixed question of fact and law as observed by the trial Court. It is also not necessary to record evidence of the parties and to hear them in detail to come to conclusion whether the City Civil Court has jurisdiction or not. Taking into consideration the pleadings of the plaintiff and the legal position settled by the Full Bench of this Court, it is clear that the jurisdiction is with the Presidency Small Cause Court under Section 41 of the PSCC Act and not with the City Civil Court.

4. Therefore, the Appeal is allowed. The impugned order is hereby set aside. The Notice of Motion is allowed and the trial Court is hereby directed to return the plaint to the plaintiff for presentation before the appropriate Court having jurisdiction.

5. As the Appeal itself is allowed, the Civil Application does not survive and stands disposed of.

(J.H.BHATIA,J.)